



AIMS Agency Information Management System

Resolved Interaction

Interaction Number: 14104

[copy press contact to new](#)

Initiation Date*:	2017-12-22
Title*:	Press Call
Question*:	Whether the Secretary of EPA violate the Federal Advisory Committee Act when issuing his Oct. 31 directive on exclusions to various federal advisory committees?
Update:	
Categories*:	Other
Origin Of Interaction*:	Email
Source*:	Non-Agency Press
First Name:	Brandi
Last Name:	Buchman
Title:	Reporter - Courthouse New Service
Position:	
Email:	(b) (6)
Phone:	(b) (6)
Other Contact Notes:	
Assignment:	Elaine Newton
Watching:	
Temporary Notes:	
created by:	Elaine Newton

Resolution Information

Resolution Date*:	2017-12-22
Resolution Category*:	Resolved
Response*:	Generally, the FACA rules are outside of OGE's purview. I recommended that she contact the General Services Administration. (Assigned to: Elaine Newton)
Complexity (level):	1 [Click to view/hide complexity guidelines]
Time Spent (hours):	0-1 hour
Contributor:	
<input type="button" value="reopen"/>	

Interaction History Log

Closed	12/22/2017 12:02:25 PM by Elaine Newton
Now Assigned: Elaine Newton	12/22/2017 12:02:25 PM by Elaine Newton

Division(s) assigned: GCLPD

From: [Seth Jaffe](#)
To: [Shelley K. Finlayson](#)
Subject: Re: Declined: Updated: GAO entrance conference (EPA)
Date: Monday, December 04, 2017 8:28:30 AM

Shelley,

I also apologize as I believe that I have not yet added my IG class in January to my outlook schedule.

Seth

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Shelley K. Finlayson" <skfinlay@oge.gov>
Date: 12/4/17 8:16 AM (GMT-05:00)
To: Seth Jaffe <sjaffe@oge.gov>
Subject: RE: Declined: Updated: GAO entrance conference (EPA)

Seth –

I apologize. I thought I had checked your calendar correctly. I will send alternate dates and decide if we need to move it.

Thanks,
Shelley

-----Original Appointment-----

From: Seth Jaffe
Sent: Friday, December 01, 2017 5:50 PM
To: Shelley K. Finlayson
Subject: Declined: Updated: GAO entrance conference (EPA)
When: Thursday, January 11, 2018 10:30 AM-11:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where:

Shelley,

I will be unable to attend as I will be teaching at the IG Academy in Chareslton, SC on the 10th and 11th of January.

Seth

Sent from my Verizon, Samsung Galaxy smartphone

Rachel K. Dowell

Subject: Canceled: GAO entrance conference (EPA)

Start: Thu 1/11/2018 10:30 AM

End: Thu 1/11/2018 11:30 AM

Show Time As: Free

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Shelley K. Finlayson

Required Attendees: Seth Jaffe; Dale A. Christopher

Importance: High

Rachel K. Dowell

Subject: Canceled: GAO entrance conference (EPA)

Start: Thu 1/11/2018 10:30 AM

End: Thu 1/11/2018 11:30 AM

Show Time As: Free

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Shelley K. Finlayson

Required Attendees: Seth Jaffe; Dale A. Christopher

Importance: High

From: [Seth Jaffe](#)
To: [Shelley K. Finlayson](#)
Subject: Accepted: GAO Entrance Conference (EPA)

From: [Seth Jaffe](#)
To: [Shelley K. Finlayson](#)
Subject: Accepted: GAO Entrance Conference (EPA)

From: [Seth Jaffe](#)
To: [Shelley K. Finlayson](#)
Cc: [Dale A. Christopher](#)
Subject: RE: Discussion topics for OGE/GAO entrance conference - EPA Advisory Committees review (102380)
Date: Tuesday, December 19, 2017 10:44:24 AM

Shelley,

FYI: I reviewed the questions and they do seem best suited for me to address. I believe that it will take a good amount of time for me to formulate proposed ways to address the questions.

I see that the entrance conference is scheduled for January 9th. Do we have a pre-meeting scheduled to discuss the questions and our responses? I suggest that we probably should have at least a couple of days between any pre-meeting and the entrance conference.

Thanks,
Seth

From: Shelley K. Finlayson
Sent: Friday, December 15, 2017 4:02 PM
To: Dale A. Christopher; Seth Jaffe
Subject: Fwd: Discussion topics for OGE/GAO entrance conference - EPA Advisory Committees review (102380)

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Koenen, Mary" (b) (6)
Date: 12/15/17 10:34 AM (GMT-05:00)
To: "Shelley K. Finlayson" <skfinlay@oge.gov>
Subject: Discussion topics for OGE/GAO entrance conference - EPA Advisory Committees review (102380)

Shelley,

As promised, I am sending you a list of topics we hope to discuss when we meet with you and your colleagues on Tuesday, Jan. 9 for the EPA Advisory Committees (job code 102380) entrance conference.

Please do not hesitate to ask if you have questions. Otherwise, we'll look forward to seeing you on Jan. 9 at 1pm!

With best regards,
Mary

From: Shelley K. Finlayson [<mailto:skfinlay@oge.gov>]
Sent: Tuesday, December 05, 2017 2:35 PM
To: Koenen, Mary
Subject: RE: New GAO Engagement

Thank, Mary.
We are confirmed.
Regards,
Shelley

From: Koenen, Mary (b) (6)
Sent: Tuesday, December 05, 2017 1:33 PM
To: Shelley K. Finlayson
Cc: Egan, Charles T
Subject: RE: New GAO Engagement

Shelley,

Great! Please consider Tues., January 9 from 1-2pm at 1201 New York Ave., NW confirmed on our end. We look forward to seeing you then, and we will send you our discussion topics for the meeting as soon as possible.

All best,
Mary

From: Shelley K. Finlayson [<mailto:skfinlay@oge.gov>]
Sent: Tuesday, December 05, 2017 10:52 AM
To: Koenen, Mary
Cc: Egan, Charles T
Subject: RE: New GAO Engagement

Hi Mary –

We can do Tuesday, January 9th from 1-2. We look forward to seeing you and your team then.
Thanks,
Shelley

From: Koenen, Mary (b) (6)
Sent: Monday, December 04, 2017 8:33 AM
To: Shelley K. Finlayson
Cc: Egan, Charles T
Subject: RE: New GAO Engagement

Hi Shelley,

Our calendars are wide open on Friday, Jan. 5. We also can meet on Tuesday, Jan. 9 from 1-2pm. Does either of those dates work for you?

Mary

From: Shelley K. Finlayson [<mailto:skfinlay@oge.gov>]
Sent: Monday, December 04, 2017 8:24 AM
To: Koenen, Mary
Cc: Egan, Charles T
Subject: RE: New GAO Engagement

Hi Mary –

Unfortunately, It turns out that one of our team has work travel on the 10-11th, which wasn't yet posted to his calendar. Please let me know what else might work on your end.

Thanks,
Shelley

From: Koenen, Mary (b) (6)
Sent: Friday, December 01, 2017 1:10 PM
To: Shelley K. Finlayson
Cc: Egan, Charles T
Subject: RE: New GAO Engagement

Shelley,

If 10:30-11:30am on Thur., Jan. 11 works for you, please consider it booked on our end. Should we plan on meeting you at 1201 New York Ave., NW?

Also: for any meeting participants who cannot attend in person, we'd be happy to offer the following conference line: (b) (6)

Thank you and I look forward to seeing you soon!

With best regards,
Mary

From: Shelley K. Finlayson [<mailto:skfinlay@oge.gov>]
Sent: Friday, December 01, 2017 12:12 PM
To: Koenen, Mary
Cc: Egan, Charles T
Subject: RE: New GAO Engagement

Hi Mary –

Thursday, January 11th also works for us.
Our team is available at either 10:30 – 11:30 or 1-2.
Please let me know your preferred time.

Thanks,
Shelley

From: Koenen, Mary (b) (6)
Sent: Friday, December 01, 2017 10:27 AM
To: Shelley K. Finlayson
Cc: Egan, Charles T

Subject: RE: New GAO Engagement

Shelley,

I was worried that scheduling around the holidays could prove tricky, and with good cause! None of those dates work for us. Since that's the case, why don't we plan to meet in the New Year?

Our calendars are wide open on Friday, Jan. 5 and Thursday, Jan. 11. We also can meet on Tuesday, Jan. 9 from 1-2pm. If there's a 1-hour time block that could work for you and your colleagues on any of these days, please feel free to suggest the specific time that works best for you. Thank you so much!

With best regards,
Mary

From: Shelley K. Finlayson [<mailto:skfinlay@oge.gov>]
Sent: Friday, December 01, 2017 9:48 AM
To: Koenen, Mary
Cc: Egan, Charles T
Subject: RE: New GAO Engagement

Hi Mary –
Unfortunately, those days/times do not work for our team. We are available:

Wednesday, 12/13 from 11-12, 2-3, or 3-4
Monday, 12/18 from 2-3 or 3-4
Tuesday, 12/19 from 1:30-2:30 or 4-5

We look forward to receiving the discussion topics and meeting your team.
Thanks,
Shelley

From: Koenen, Mary (b) (6)
Sent: Friday, December 01, 2017 9:25 AM
To: Shelley K. Finlayson
Cc: Egan, Charles T
Subject: RE: New GAO Engagement

Dear Shelley,

To follow up on your email below, I have consulted my and my colleagues' calendars for options for an entrance conference with OGE. Our calendars show availability on:

- Wed., 12/6 from 3:30-4:30pm ET
- Fri., 12/15 from 2-3pm ET

Does either of these times work for you and your colleagues? If so, please feel free to suggest the time that would work best for a 1-hour meeting at OGE.

So you know, we are working on a list of discussion topics to guide the discussion, and will send those to you as soon as possible. Until then, thank you so much for your help, and we look forward to meeting you soon!

With best regards,
Mary

From: Shelley K. Finlayson [<mailto:skfinlay@oge.gov>]
Sent: Wednesday, November 22, 2017 3:15 PM
To: May, Signora J
Cc: Koenen, Mary; Egan, Charles T
Subject: RE: New GAO Engagement

Good afternoon Signora,
I am in receipt of the attached and will notify appropriate staff of this engagement.
We are currently in the process of scheduling an entrance conference on another GAO engagement (code 102344) for the week of December 11th. Please provide suggested entrance conference dates and we will coordinate the schedules of required staff.
Thanks and happy Thanksgiving,
Shelley

Shelley K. Finlayson
Chief of Staff and Program Counsel
U.S. Office of Government Ethics
1201 New York Avenue NW, Suite 500
Washington, DC 20005
(202) 482-9314
skfinlay@oge.gov

Visit OGE's website: www.oge.gov
Follow OGE on Twitter: @OfficeGovEthics

From: May, Signora J (b) (6)
Sent: Wednesday, November 22, 2017 2:35 PM
To: Shelley K. Finlayson
Cc: Koenen, Mary; Egan, Charles T
Subject: New GAO Engagement

Good afternoon Shelley,

Please see the attached informing you of a new GAO engagement on EPA Advisory Committees—code 102380. The enclosure provides information on the engagement. We would appreciate your notifying the appropriate officials of this work. The next step will be to set up an entrance conference.

Your GAO points of contact for this engagement will be:

Alfredo Gomez, Director, (b) (6)
Joseph Thompson, Assistant Director, (b) (6)
Charlie Egan, Co-Analyst-in-Charge, (b) (6)
Mary Koenen, Co-Analyst-in-Charge, (b) (6)

Happy Thanksgiving and Best Regards,

Signora

(b) (6)

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From: [Shelley K. Finlayson](#)
To: ["Koenen, Mary"](#)
Subject: RE: Discussion topics for OGE/GAO entrance conference - EPA Advisory Committees review (102380)
Date: Tuesday, January 09, 2018 8:54:55 AM

Good morning, Mary –

When your team arrives at the building today, please be aware that the lobby is under construction so you must enter from the I Street entrance (near 12th and I Streets NW). Once in the elevator lobby please call (202) 482-9250 and one of our staff will come down to escort you to the 5th floor. We look forward to seeing you,
Shelley

From: Koenen, Mary [mailto:KoenenM@gao.gov]
Sent: Friday, December 15, 2017 10:35 AM
To: Shelley K. Finlayson
Subject: Discussion topics for OGE/GAO entrance conference - EPA Advisory Committees review (102380)

Shelley,

As promised, I am sending you a list of topics we hope to discuss when we meet with you and your colleagues on Tuesday, Jan. 9 for the EPA Advisory Committees (job code 102380) entrance conference.

Please do not hesitate to ask if you have questions. Otherwise, we'll look forward to seeing you on Jan. 9 at 1pm!

With best regards,
Mary

Rest of chain released in part above



Seth Jaffe

G-fo 1/2 mty
1/4 entrance
-Review

From: Shelley K. Finlayson
Sent: Friday, December 15, 2017 4:02 PM
To: Dale A. Christopher; Seth Jaffe
Subject: Fwd: Discussion topics for OGE/GAO entrance conference - EPA Advisory Committees review (102380)
Attachments: FY18_ALL_STAFF-#198957-v4-
QUESTIONS_ENTRANCE_CONFERENCE_WITH_OGE.DOCX

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Koenen, Mary" <KoenenM@gao.gov>
Date: 12/15/17 10:34 AM (GMT-05:00)
To: "Shelley K. Finlayson" <skfinlay@oge.gov>
Subject: Discussion topics for OGE/GAO entrance conference - EPA Advisory Committees review (102380)

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Please do not hesitate to ask if you have questions. Otherwise, we'll look forward to seeing you on Jan. 9 at 1pm!

With best regards,
Mary

Rest of chain released in part above





E. SCOTT PRUITT
ADMINISTRATOR

TO: Assistant Administrators
Regional Administrators
Office of General Counsel

FROM: E. Scott Pruitt
Administrator

DATE: October 31, 2017

SUBJECT: Strengthening and Improving Membership on EPA Federal Advisory Committees

Federal Advisory Committees (FACs) serve important and influential roles for federal agencies – particularly the U.S. Environmental Protection Agency (EPA).¹ EPA's FACs presently provide advice on a broad array of subjects, including pesticides,² drinking water quality,³ air quality,⁴ rural community welfare,⁵ and children's health.⁶ FACs can be established by statutory requirement, at the discretion of federal agencies, or through presidential directive.⁷ Currently, EPA manages 22 FACs that provide valuable expertise, insight and recommendations that guide the Agency's decision-making in fulfilling its core mission of protecting human health and the environment.⁸

¹ "Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse." FACA 101, <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/finding-information-on-faca-committees/faca-101>.

² Pesticide Program Dialogue Committee (PPDC), <https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc>.

³ National Drinking Water Advisory Council (NDWAC), <https://www.epa.gov/ndwac>.

⁴ Clean Air Scientific Advisory Committee (CASAC), <https://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

⁵ Farm, Ranch, and Rural Communities Advisory Committee (FRRCC), <https://www.epa.gov/faca/frrcc>.

⁶ Children's Health Protection Advisory Committee (CHPAC), <https://www.epa.gov/children>.

⁷ The Clean Air Scientific Advisory Committee (CASAC) was established under the Clean Air Act. The Board of Scientific Counselors (BOSC) was established by EPA. The Good Neighbor Environmental Board (GNEB) was established by presidential authority.

⁸ All Federal Advisory Committees at EPA, <https://www.epa.gov/faca/all-federal-advisory-committees-epa>.



E. SCOTT PRUITT
ADMINISTRATOR

The Federal Advisory Committee Act (FACA)⁹ generally requires that FACs operate in an independent, orderly, balanced, and transparent manner.¹⁰ Critical to the integrity of FACs is the selection of qualified and knowledgeable candidates. Since each FAC serves a unique purpose, FACs differ in specific composition requirements,¹¹ but all FACs must be “fairly balanced in terms of the points of view represented and functions to be performed by the committee.”¹² The EPA Administrator should choose qualified candidates to serve on the EPA’s FACs.¹³ In addition to knowledge and expertise, other qualifications should also factor strongly into selecting FAC members. Candidates should be independent from the Agency, must avoid any conflicts of interest within the scope of their review, and should be fully committed to objectively serving the Agency and public.

In the spirit of cooperative federalism and recognition of the unique experience of state, tribal and local government officials, committee balance should reflect prominent participation from state, tribal and local governments. Such participation should be appropriate for the committee’s purpose and function. Furthermore, FAC membership should be balanced with persons from different parts of the country to create geographic diversity. Finally, in order to ensure broader participation in FACs, and to ensure that advancements in scientific and technological thinking continually factor into committee reviews, regular rotation of members to assure fresh perspectives should also guide the Agency’s choice of FAC members.

This memorandum accompanies, and explains the principles underlying, a set of directives intended to strengthen and improve the composition of EPA’s FACs in ways that advance the Agency’s mission to protect public health and welfare, that are consistent with the principles of cooperative federalism, and that follow the rule of law and agency directives and guidance.

⁹ 5 U.S.C. app., <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf>.

¹⁰ FACA Essentials at EPA for Federal Advisory Committee Members, https://www.epa.gov/sites/production/files/2017-02/documents/faca_essentials_for_2016_pending.pdf.

¹¹ For example, the Clean Air Scientific Advisory Committee (CASAC) is comprised of seven members, including one physician, one state air pollution control agency representative, and one member of the National Academy of Sciences. See 42 U.S.C. § 7409(d)(2). However, not all FACs have statutory membership requirements.

¹² 5 U.S.C. app. § 5(b)(2).

¹³ 41 CFR 102-3.60(b)(3) (“Fairly balanced membership. A description of the agency’s plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and **qualified**, as appropriate to the nature and functions of the advisory committee.”) (emphasis added).



E. SCOTT PRUITT
ADMINISTRATOR

A. Strengthen Member Independence

A vital part of ensuring integrity and confidence in EPA's FACs comes from guaranteeing that FAC members remain independent of the Agency during their service. EPA FAC members should avoid financial entanglements with EPA to the greatest extent possible.

Non-governmental and non-tribal members in direct receipt of EPA grants while serving on an EPA FAC can create the appearance or reality of potential interference with their ability to independently and objectively serve as a FAC member. FAC members should be motivated by service and committed to providing informed and independent expertise and judgment.

Ensuring FAC member independence strengthens the integrity, objectivity and reliability of EPA FACs. Accordingly, in addition to EPA's existing policies and legal requirements preventing conflicts of interest among the membership of the Agency's FACs, it shall be the policy of the Agency that no member of an EPA federal advisory committee currently receive EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle should not apply to state, tribal or local government agency recipients of EPA grants.

B. Increase State, Tribal and Local Government Participation

EPA alone cannot fully meet the environmental challenges this country faces. Under the principle of cooperative federalism, environmental protection is a duty shared between state, tribal, local and federal governments. EPA relies on states, tribes and local communities to assist in, and in some cases assume primary responsibility for, planning and overseeing environmental protection.¹⁴ Rather than solely rely on the opinions of federal officials in Washington, D.C., the Agency should seek the expertise and unique perspectives of public servants at all levels of government across the country. Cooperative federalism underlies many of the environmental statutes passed by Congress since states, tribes and local governments have a better understanding of, and are well-positioned to address, their environmental challenges.

Therefore, state, tribal and local government officials should figure prominently in FAC membership. Increasing state, tribal and local government participation on FACs strengthens EPA decision-making through enhanced public inclusion in EPA policy and programs choices, and joint accountability at all levels of government.

¹⁴ The Clean Air Act, Clean Water Act, and Safe Drinking Water Act contain provisions giving states and tribes primary responsibility for environmental protection.



E. SCOTT PRUITT
ADMINISTRATOR

C. Enhance Geographic Diversity

EPA's FACs should be balanced to ensure the inclusion and consideration of different viewpoints, consistent with a fundamental goal of FACA.¹⁵ Participation of members from a broad range of geographic regions – especially areas that have historically been unrepresented or underrepresented – should prominently factor into creating balanced membership on FACs.¹⁶ The distinctive experiences, climates and environmental issues facing citizens spread across the United States naturally necessitates strong geographic diversity so that extensive regional perspectives are represented on FACs.¹⁷

Accordingly, with the exception of FACs established to specifically address regional/area specific issues, EPA shall seek to ensure that FAC membership is geographically diverse. Emphasis should be given to candidates from states or EPA regions that are unrepresented or underrepresented on EPA FACs.

D. Promote Fresh Perspectives

Experts serving on FACs should regularly rotate on and off committees to allow for new opinions and fresh ideas. Members who serve on FACs for an extended and continuous period of time risk minimizing viewpoints, lessening diversity, and preventing other qualified candidates from serving. EPA acknowledges the importance of fresh perspectives in its peer review handbook to “keep balance” and “avoid repeated use” of persons that could diminish original feedback.¹⁸

¹⁵ “(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.” 5 U.S.C. app. § 2(a), <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf> (emphasis added).

¹⁶ “The composition of an advisory committee’s membership will depend upon several factors, including: (i) The advisory committee’s mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee’s recommendations. . . .” 41 C.F.R. Part 102-3, App. A to Subpart B (emphasis added); https://www.gsa.gov/cdnstatic/FACAFinalRule_R2E-cNZ_0Z5RDZ-i34K-pR.pdf.

¹⁷ See CASAC Membership Balance Plan stating that “Geographic location may be considered” as an “important” factor in achieving a balanced FAC, <https://www.facadatabase.gov/committee/charters.aspx?cid=634&aid=51>; Board of Scientific Counselors stating that “Balances in disciplines, work sector (i.e., academia, government – federal/state/local, industry, environmental associations), diversity, and geographic distribution area are also considered.” <https://www.facadatabase.gov/committee/charters.aspx?cid=1577&aid=51>.

¹⁸ *Peer Review Handbook*, Science and Technology Policy Council, U.S. Env’tl. Prot. Agency, https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.



E. SCOTT PRUITT
ADMINISTRATOR

New members also help to ensure that FACs remain current with innovative and new scientific and technological expertise. Membership should therefore be dynamic and open to a broad, diverse array of experts who can potentially provide unique and informative new perspectives.¹⁹

Conclusion

EPA's FAC members provide essential and invaluable advice and support to the Agency. Strengthening FAC membership independence from EPA, increasing state, tribal and local government participation, and emphasizing geographic diversity and fresh perspectives, to the greatest extent practicable, serve to enhance the diversity of viewpoints and thereby provide robust and appropriately balanced advice to EPA. These changes also further help EPA meet its core mission of providing the American people with clean air, land, and water.

¹⁹ EPA's Peer-Review Handbook considers adding fresh perspectives through new peer reviewers an "important qualification" to add balance of views and avoid the repeated use of the same persons. See https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.



E. SCOTT PRUITT
ADMINISTRATOR

SUBJECT: Strengthening and Improving Membership on EPA Federal Advisory Committees

The U.S. Environmental Protection Agency relies on independent, expert advice from a variety of federal advisory committees to help inform sound decision-making and fulfill its core mission of protecting human health and the environment. Given the critical role these committees play, it is in the public interest to select the most qualified, knowledgeable, and experienced candidates. In order to strengthen and improve the independence, diversity and breadth of participation on EPA federal advisory committees, the Agency shall, consistent with applicable laws and regulations, apply the following principles and procedures when establishing the membership of such committees:

1. *Strengthen Member Independence:* Members shall be independent from EPA, which shall include a requirement that no member of an EPA federal advisory committee be currently in receipt of EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle shall not apply to state, tribal or local government agency recipients of EPA grants.
2. *Increase State, Tribal and Local Government Participation:* In the spirit of cooperative federalism and recognition of the unique experience of state, tribal and local government officials, committee balance should reflect prominent participation from state, tribal and local governments. Such participation should be appropriate for the committee's purpose and function.
3. *Enhance Geographic Diversity:* Given the range of environmental and public health considerations across the country, membership should be balanced with individuals from different states and EPA regions. Emphasis should be given to individuals from historically unrepresented or underrepresented states and regions.
4. *Promote Fresh Perspectives:* To encourage and promote the inclusion of new candidates with fresh perspectives and to avoid prolonged and continuous service, membership should be rotated regularly.

This directive is intended to improve the internal management of EPA and does not create a right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, EPA, its officers or employees, or any other person. Where appropriate or to be consistent with applicable law, I reserve the right to exercise my discretion to depart from the procedures set forth in this directive.

With these improvements to EPA's federal advisory committees, the Agency is taking another step to provide the public with a better, more effective government.

E. Scott Pruitt
October 31, 2017



E. SCOTT PRUITT
ADMINISTRATOR

TO: Assistant Administrators
Regional Administrators
Office of General Counsel

FROM: E. Scott Pruitt
Administrator

DATE: October 31, 2017

SUBJECT: Strengthening and Improving Membership on EPA Federal Advisory Committees

Federal Advisory Committees (FACs) serve important and influential roles for federal agencies – particularly the U.S. Environmental Protection Agency (EPA).¹ EPA's FACs presently provide advice on a broad array of subjects, including pesticides,² drinking water quality,³ air quality,⁴ rural community welfare,⁵ and children's health.⁶ FACs can be established by statutory requirement, at the discretion of federal agencies, or through presidential directive.⁷ Currently, EPA manages 22 FACs that provide valuable expertise, insight and recommendations that guide the Agency's decision-making in fulfilling its core mission of protecting human health and the environment.⁸

¹ "Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse." FACA 101, <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/finding-information-on-faca-committees/faca-101>.

² Pesticide Program Dialogue Committee (PPDC), <https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc>.

³ National Drinking Water Advisory Council (NDWAC), <https://www.epa.gov/ndwac>.

⁴ Clean Air Scientific Advisory Committee (CASAC), <https://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

⁵ Farm, Ranch, and Rural Communities Advisory Committee (FRRCC), <https://www.epa.gov/faca/frrcc>.

⁶ Children's Health Protection Advisory Committee (CHPAC), <https://www.epa.gov/children>.

⁷ The Clean Air Scientific Advisory Committee (CASAC) was established under the Clean Air Act. The Board of Scientific Counselors (BOSC) was established by EPA. The Good Neighbor Environmental Board (GNEB) was established by presidential authority.

⁸ All Federal Advisory Committees at EPA, <https://www.epa.gov/faca/all-federal-advisory-committees-epa>.





E. SCOTT PRUITT
ADMINISTRATOR

The Federal Advisory Committee Act (FACA)⁹ generally requires that FACs operate in an independent, orderly, balanced, and transparent manner.¹⁰ Critical to the integrity of FACs is the selection of qualified and knowledgeable candidates. Since each FAC serves a unique purpose, FACs differ in specific composition requirements,¹¹ but all FACs must be “fairly balanced in terms of the points of view represented and functions to be performed by the committee.”¹² The EPA Administrator should choose qualified candidates to serve on the EPA’s FACs.¹³ In addition to knowledge and expertise, other qualifications should also factor strongly into selecting FAC members. Candidates should be independent from the Agency, must avoid any conflicts of interest within the scope of their review, and should be fully committed to objectively serving the Agency and public.

In the spirit of cooperative federalism and recognition of the unique experience of state, tribal and local government officials, committee balance should reflect prominent participation from state, tribal and local governments. Such participation should be appropriate for the committee’s purpose and function. Furthermore, FAC membership should be balanced with persons from different parts of the country to create geographic diversity. Finally, in order to ensure broader participation in FACs, and to ensure that advancements in scientific and technological thinking continually factor into committee reviews, regular rotation of members to assure fresh perspectives should also guide the Agency’s choice of FAC members.

This memorandum accompanies, and explains the principles underlying, a set of directives intended to strengthen and improve the composition of EPA’s FACs in ways that advance the Agency’s mission to protect public health and welfare, that are consistent with the principles of cooperative federalism, and that follow the rule of law and agency directives and guidance.

⁹ 5 U.S.C. app., <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf>.

¹⁰ FACA Essentials at EPA for Federal Advisory Committee Members, https://www.epa.gov/sites/production/files/2017-02/documents/faca_essentials_for_2016_pending.pdf.

¹¹ For example, the Clean Air Scientific Advisory Committee (CASAC) is comprised of seven members, including one physician, one state air pollution control agency representative, and one member of the National Academy of Sciences. *See* 42 U.S.C. § 7409(d)(2). However, not all FACs have statutory membership requirements.

¹² 5 U.S.C. app. § 5(b)(2).

¹³ 41 CFR 102-3.60(b)(3) (“Fairly balanced membership. A description of the agency’s plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and **qualified**, as appropriate to the nature and functions of the advisory committee.”) (emphasis added).



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A. Strengthen Member Independence

A vital part of ensuring integrity and confidence in EPA's FACs comes from guaranteeing that FAC members remain independent of the Agency during their service. EPA FAC members should avoid financial entanglements with EPA to the greatest extent possible.

Non-governmental and non-tribal members in direct receipt of EPA grants while serving on an EPA FAC can create the appearance or reality of potential interference with their ability to independently and objectively serve as a FAC member. FAC members should be motivated by service and committed to providing informed and independent expertise and judgment.

Ensuring FAC member independence strengthens the integrity, objectivity and reliability of EPA FACs. Accordingly, in addition to EPA's existing policies and legal requirements preventing conflicts of interest among the membership of the Agency's FACs, it shall be the policy of the Agency that no member of an EPA federal advisory committee currently receive EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle should not apply to state, tribal or local government agency recipients of EPA grants.

B. Increase State, Tribal and Local Government Participation

EPA alone cannot fully meet the environmental challenges this country faces. Under the principle of cooperative federalism, environmental protection is a duty shared between state, tribal, local and federal governments. EPA relies on states, tribes and local communities to assist in, and in some cases assume primary responsibility for, planning and overseeing environmental protection.¹⁴ Rather than solely rely on the opinions of federal officials in Washington, D.C., the Agency should seek the expertise and unique perspectives of public servants at all levels of government across the country. Cooperative federalism underlies many of the environmental statutes passed by Congress since states, tribes and local governments have a better understanding of, and are well-positioned to address, their environmental challenges.

Therefore, state, tribal and local government officials should figure prominently in FAC membership. Increasing state, tribal and local government participation on FACs strengthens EPA decision-making through enhanced public inclusion in EPA policy and programs choices, and joint accountability at all levels of government.

¹⁴ The Clean Air Act, Clean Water Act, and Safe Drinking Water Act contain provisions giving states and tribes primary responsibility for environmental protection.



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C. Enhance Geographic Diversity

EPA's FACs should be balanced to ensure the inclusion and consideration of different viewpoints, consistent with a fundamental goal of FACA.¹⁵ Participation of members from a broad range of geographic regions – especially areas that have historically been unrepresented or underrepresented – should prominently factor into creating balanced membership on FACs.¹⁶ The distinctive experiences, climates and environmental issues facing citizens spread across the United States naturally necessitates strong geographic diversity so that extensive regional perspectives are represented on FACs.¹⁷

Accordingly, with the exception of FACs established to specifically address regional/area specific issues, EPA shall seek to ensure that FAC membership is geographically diverse. Emphasis should be given to candidates from states or EPA regions that are unrepresented or underrepresented on EPA FACs.

D. Promote Fresh Perspectives

Experts serving on FACs should regularly rotate on and off committees to allow for new opinions and fresh ideas. Members who serve on FACs for an extended and continuous period of time risk minimizing viewpoints, lessening diversity, and preventing other qualified candidates from serving. EPA acknowledges the importance of fresh perspectives in its peer review handbook to “keep balance” and “avoid repeated use” of persons that could diminish original feedback.¹⁸

¹⁵ “(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and **diverse opinions** to the Federal Government.” 5 U.S.C. app. § 2(a), <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf> (emphasis added).

¹⁶ “The composition of an advisory committee’s membership will depend upon several factors, including: (i) The advisory committee’s mission; (ii) The **geographic**, ethnic, social, economic, or scientific impact of the advisory committee’s recommendations. . .” 41 C.F.R. Part 102-3, App. A to Subpart B (emphasis added); https://www.gsa.gov/cdnstatic/FACAFinalRule_R2E-cNZ_0Z5RDZ-i34K-pR.pdf.

¹⁷ See CASAC Membership Balance Plan stating that “Geographic location may be considered” as an “important” factor in achieving a balanced FAC, <https://www.facadatabase.gov/committee/charters.aspx?cid=634&aid=51>; Board of Scientific Counselors stating that “Balances in disciplines, work sector (i.e., academia, government – federal/state/local, industry, environmental associations), diversity, and geographic distribution area are also considered.” <https://www.facadatabase.gov/committee/charters.aspx?cid=1577&aid=51>.

¹⁸ *Peer Review Handbook*, Science and Technology Policy Council, U.S. Env’tl. Prot. Agency, https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.



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New members also help to ensure that FACs remain current with innovative and new scientific and technological expertise. Membership should therefore be dynamic and open to a broad, diverse array of experts who can potentially provide unique and informative new perspectives.¹⁹

Conclusion

EPA's FAC members provide essential and invaluable advice and support to the Agency. Strengthening FAC membership independence from EPA, increasing state, tribal and local government participation, and emphasizing geographic diversity and fresh perspectives, to the greatest extent practicable, serve to enhance the diversity of viewpoints and thereby provide robust and appropriately balanced advice to EPA. These changes also further help EPA meet its core mission of providing the American people with clean air, land, and water.

¹⁹ EPA's Peer-Review Handbook considers adding fresh perspectives through new peer reviewers an "important qualification" to add balance of views and avoid the repeated use of the same persons. See https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.





E. SCOTT PRUITT
ADMINISTRATOR

TO: Assistant Administrators
Regional Administrators
Office of General Counsel

FROM: E. Scott Pruitt
Administrator

DATE: October 31, 2017

SUBJECT: Strengthening and Improving Membership on EPA Federal Advisory Committees

Federal Advisory Committees (FACs) serve important and influential roles for federal agencies – particularly the U.S. Environmental Protection Agency (EPA).¹ EPA's FACs presently provide advice on a broad array of subjects, including pesticides,² drinking water quality,³ air quality,⁴ rural community welfare,⁵ and children's health.⁶ FACs can be established by statutory requirement, at the discretion of federal agencies, or through presidential directive.⁷ Currently, EPA manages 22 FACs that provide valuable expertise, insight and recommendations that guide the Agency's decision-making in fulfilling its core mission of protecting human health and the environment.⁸

¹ "Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse." FACA 101, <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/finding-information-on-faca-committees/faca-101>.

² Pesticide Program Dialogue Committee (PPDC), <https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc>.

³ National Drinking Water Advisory Council (NDWAC), <https://www.epa.gov/ndwac>.

⁴ Clean Air Scientific Advisory Committee (CASAC), <https://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

⁵ Farm, Ranch, and Rural Communities Advisory Committee (FRRCC), <https://www.epa.gov/faca/frcc>.

⁶ Children's Health Protection Advisory Committee (CHPAC), <https://www.epa.gov/children>.

⁷ The Clean Air Scientific Advisory Committee (CASAC) was established under the Clean Air Act. The Board of Scientific Counselors (BOSC) was established by EPA. The Good Neighbor Environmental Board (GNEB) was established by presidential authority.

⁸ All Federal Advisory Committees at EPA, <https://www.epa.gov/faca/all-federal-advisory-committees-epa>.



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